

AMENDED IN ASSEMBLY MAY 27, 2011

AMENDED IN ASSEMBLY APRIL 12, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 291

Introduced by Assembly Member Wieckowski

February 8, 2011

An act to amend ~~Section 25299.52~~ of Sections 25299.43 and 25299.117 of, to add Section 25299.51.3 to, and to repeal Article 9 (commencing with Section 25299.81) of Chapter 6.75 of Division 20 of, the Health and Safety Code, relating to underground storage tanks.

LEGISLATIVE COUNSEL'S DIGEST

AB 291, as amended, Wieckowski. Underground storage tanks: petroleum: ~~corrective action claims~~. *act extension: charges.*

~~Under~~

(1) *Under the existing Barry Keene Underground Storage Tank Cleanup Trust Fund Act of 1989, which is repealed on January 1, 2016, every owner of an underground storage tank is required to pay a storage fee for each gallon of petroleum placed in the tank. The act, among other things, requires the owners and operators of those tanks to establish and maintain evidence of financial responsibility and authorizes the State Water Resources Control Board, a California regional water quality control board, or a local agency to take corrective action with regard to a release from those tanks. The act requires certain information to be submitted by tank owners or operators under penalty of perjury. The fees are required to be deposited in the Underground Storage Tank Cleanup Fund and the State Water Resources Control Board board is authorized to expend the moneys in the fund,*

upon appropriation by the Legislature, for various purposes, including the payment of claims to aid owners and operators of petroleum underground storage tanks who take corrective action to clean up unauthorized releases from those tanks. ~~The board is required to award the claims in accordance with a specified priority ranking, which provides for 4 categories of priority, corrective actions undertaken by the board, a California regional water quality control board, or a local agency, the cleanup and oversight of unauthorized releases at abandoned tank sites, and grants to small businesses to retrofit certain hazardous substance underground storage tanks.~~

~~This bill would require the board to allocate 25 percent of the funds authorized to be expended for claims filed for the 2nd and 3rd priority rankings based upon the environmental risk priority of the claims.~~

Existing law provides for an increase in fee at a rate of \$0.006 per gallon of petroleum between January 1, 2010, and December 31, 2011, and terminates that increase on January 1, 2012.

This bill would delete the repeal of the act, thereby continuing indefinitely the operation of that act, including the requirement for the payment of the fee and the criminal penalties concerned within. The bill would also continue the requirement to pay that increased amount of \$0.006 per gallon until January 1, 2014. By operation of existing law, the revenue resulting from the fee would be required to be deposited in the fund and be available, upon appropriation, for expenditure for the purposes authorized under existing law for money in the fund. This bill would constitute a change in state statute that would result in a taxpayer paying a higher tax within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of $\frac{2}{3}$ of the membership of each house of the Legislature.

By continuing the operation of the criminal penalties of the act, the bill would impose a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: ~~majority~~^{2/3}. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 **SECTION 1.** *Section 25299.43 of the Health and Safety Code*
2 *is amended to read:*

3 25299.43. (a) To implement the changes to this chapter made
4 by Chapter 1191 of the Statutes of 1994, and consistent with
5 Section 25299.40, effective January 1, 1995, every owner subject
6 to Section 25299.41 shall pay a storage fee of one mill (\$0.001)
7 for each gallon of petroleum placed in an underground storage
8 tank that the person owns, in addition to the fee required by Section
9 25299.41.

10 (b) On and after January 1, 1996, the storage fee imposed under
11 subdivision (a) shall be increased by two mills (\$0.002) for each
12 gallon of petroleum placed in an underground storage tank.

13 (c) On and after January 1, 1997, the storage fee increased under
14 subdivision (b) shall be increased by an additional three mills
15 (\$0.003) for each gallon of petroleum placed in an underground
16 storage tank.

17 (d) On and after January 1, 2005, the storage fee increased under
18 subdivision (c) shall be increased by an additional one mill (\$0.001)
19 for each gallon of petroleum placed in an underground storage
20 tank.

21 (e) On and after January 1, 2006, the storage fee increased under
22 subdivision (d) shall be increased by an additional one mill
23 (\$0.001) for each gallon of petroleum placed in an underground
24 storage tank.

25 (f) On and after January 1, 2010, the storage fee increased under
26 subdivision (e) shall be increased by an additional six mills
27 (\$0.006) for each gallon of petroleum placed in an underground
28 storage tank. The increase provided for in this subdivision shall
29 be effective until January 1, ~~2012~~ 2014, at which time, the fee shall
30 revert back to the fee pursuant to subdivision (e).

31 (g) The fee imposed under this section shall be paid to the State
32 Board of Equalization under Part 26 (commencing with Section
33 50101) of Division 2 of the Revenue and Taxation Code in the
34 same manner as, and consistent with, the fees imposed under
35 Section 24299.41.

36 (h) The State Board of Equalization shall amend the regulations
37 adopted under Section 25299.41 to carry out this section.

1 SEC. 2. Section 25299.51.3 is added to the Health and Safety
2 Code, to read:

3 25299.51.3. The board shall continuously post and update on
4 its Internet Web site, but at a minimum, annually on or before
5 September 30, information that describes the status of the fund
6 and shall make recommendations, when appropriate, to improve
7 the efficiency of the program.

8 SEC. 3. Article 9 (commencing with Section 25299.81) of
9 Chapter 6.75 of Division 20 of the Health and Safety Code is
10 repealed.

11 SEC. 4. Section 25299.117 of the Health and Safety Code is
12 amended to read:

13 25299.117. ~~This~~ (a) Except as provided in subdivision (b),
14 this chapter shall remain in effect only until January 1, 2016, and
15 as of that date is repealed ~~as of January 1, 2016~~, unless a later
16 enacted statute that is enacted on or before January 1, 2016, deletes
17 or extends that date.

18 (b) The repeal of this chapter does not terminate any of the
19 following rights, obligations, or authorities, or any provision
20 necessary to carry out either of the following rights and
21 obligations:

22 (1) The repayment of loans, outstanding as of January 1, 2016,
23 due and payable to the board.

24 (2) (A) The payment of loans and grants, consistent with the
25 terms of agreements that were effective prior to January 1, 2016,
26 from the Underground Storage Tank Cleanup Fund, pursuant to
27 this chapter or the Petroleum Underground Storage Tank
28 Financing Account pursuant to this chapter.

29 (B) The amount of money disbursed for grants and loans
30 pursuant to this chapter shall not exceed the sum of the following:

31 (i) The amount that reverts to the Underground Storage Tank
32 Cleanup Fund pursuant to Section 25299.111.

33 (ii) Amounts recovered through the repayment of loans granted
34 pursuant to this chapter.

35 (iii) The resolution of any cost recovery action filed prior to
36 January 1, 2016, or the initiation of an action or other collection
37 process to recover defaulted loan moneys due to the board or to
38 recover money paid to a grant or loan recipient pursuant to this
39 chapter to which the recipient is not entitled.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

~~SECTION 1. Section 25299.52 of the Health and Safety Code is amended to read:~~

~~25299.52. (a) The board shall adopt a priority ranking list at least annually for awarding claims pursuant to Section 25299.57 or 25299.58. Any owner or operator eligible for payment of a claim pursuant to Section 25299.54 shall file an application with the board within a reasonable period, to be determined by the board, prior to adoption of the priority ranking list.~~

~~(b) Except as provided in subdivision (c), in awarding claims pursuant to Section 25299.57 or 25299.58, the board shall pay claims in accordance with the following order of priority:~~

~~(1) Owners of tanks who are eligible to file a claim pursuant to subdivision (c) of Section 25299.54.~~

~~(2) (A) Owners and operators of tanks that are either of the following:~~

~~(i) An owner or operator of a tank that is a small business, by meeting the requirements of subdivision (d) of Section 14837 of the Government Code. An owner or operator that meets that definition of small business, but who is domiciled or has its principal office outside of the state, shall be classified in this category if the owner or operator otherwise meets the requirements of subdivision (d) of Section 14837 of the Government Code with regard to the number of employees and the total annual revenues received.~~

~~(ii) An owner or operator that is a city, county, district, or nonprofit organization that receives total annual revenues of not more than seven million dollars (\$7,000,000). In determining the amount of a nonprofit organization's annual revenues, the board shall calculate only those revenues directly attributable to the particular site at which the tank or tanks for which the claim is submitted are located.~~

~~(B) The board shall rank the environmental risk priority for purposes of paragraph (3) of subdivision (c) of the claims that are subject to this paragraph.~~

~~(3) (A) Owners or operators of tanks that are either of the following:~~

~~(i) The owner or operator owns and operates a business that employs fewer than 500 full-time and part-time employees, is independently owned and operated, and is not dominant in its field of operation.~~

~~(ii) The owner or operator is a city, county, district, or nonprofit organization that employs fewer than 500 full-time and part-time employees. In determining the number of employees employed by a nonprofit organization, the board shall calculate only those employees employed at the particular site at which a tank for which the claim is being submitted is located.~~

~~(B) The board shall rank the environmental risk priority for purposes of paragraph (3) of subdivision (c) of the claims subject to this paragraph.~~

~~(4) All other tank owners and operators.~~

~~(c) (1) Except as provided in paragraph (3), in any year in which the board is not otherwise authorized to award at least 15 percent of the total amount of funds committed for that year to tank owners or operators in those categories set forth in paragraph (3) or (4) of subdivision (b) due to the priority ranking list award limitations set forth in subdivision (b), the board shall allocate between 14 and 16 percent of the total amount of funds committed for that year to each category that is not otherwise entitled to at least that level of committed funding for that year.~~

~~(2) If the total amount of claims outstanding in one or more of the priority categories specified in paragraph (3) or (4) of subdivision (b) is less than 15 percent of the total amount annually appropriated from the fund for the purpose of awarding claims, the board shall reserve for making claims in that category only the amount that is necessary to satisfy the outstanding claims in that category.~~

~~(3) Notwithstanding paragraphs (1) and (2), the board shall annually allocate 25 percent of the total amount of funds committed for that year for claims filed pursuant to Section 25299.57 by owners and operators in the categories set forth in paragraphs (2)~~

1 and (3) of subdivision (b) based upon the environmental risk
2 priority of the claim.

3 (d) The board shall give priority to a claim that is filed before
4 September 24, 1993, by a city, county, or district that is eligible
5 for payment pursuant to Section 25299.54 in the following manner:

6 (1) The board shall determine whether the priority category
7 specified for a city, county, or district pursuant to subparagraph
8 (B) of paragraph (2), or pursuant to subparagraph (B) of paragraph
9 (3), of subdivision (b) requires that the priority ranking of the claim
10 be changed.

11 (2) If the priority ranking of the claim is changed and the claim
12 is placed into either the priority category specified in subparagraph
13 (B) of paragraph (2), or specified in subparagraph (B) of paragraph
14 (3), of subdivision (b), the board shall pay all other claims that
15 were assigned to that priority category prior to January 1, 2000,
16 before paying the claim of the city, county, or district.

17 (e) The board may, to carry out the intent specified in paragraph
18 (1) of subdivision (b) of Section 25299.10 and to expedite the
19 processing and awarding of claims pursuant to Sections 25299.57
20 and 25299.58, implement the contracting procedures required by
21 Chapter 10 (commencing with Section 4525) of Division 5 of Title
22 1 of the Government Code, as may be necessary, to alleviate the
23 claims processing and award backlog. If, at the conclusion of any
24 fiscal year, 25 percent or more of the funds appropriated annually
25 for awards to claimants during that year have not actually been
26 obligated by the board, the board shall, at its next regularly
27 scheduled meeting, determine, in a public hearing, whether, given
28 the circumstances of the awards backlog, it is appropriate to
29 implement those contracting procedures for some, or all, of the
30 claims filed with the board.

31 (f) For purposes of this section, the following definitions shall
32 apply:

33 (1) "Nonprofit organization" means a nonprofit public benefit
34 organization incorporated pursuant to Part 2 (commencing with
35 Section 5110) of Division 2 of Title 1 of the Corporations Code.

36 (2) "Annual revenue," with respect to public entities, means the
37 total annual general purpose revenues, excluding all restricted
38 revenues over which the governing agency has no discretion, as
39 reported in the Annual Report of Financial Transactions submitted

1 to the Controller, for the latest fiscal year ending prior to the date
2 the fund application was filed.

3 (3) ~~“Annual revenue,” with respect to nonprofit organizations;~~
4 ~~means the total annual revenues, as shown in an annual fiscal report~~
5 ~~filed with the Registry of Charitable Trusts of state and federal tax~~
6 ~~records, based on the latest fiscal year ending prior to the date the~~
7 ~~fund application was filed.~~

8 (4) ~~“General purpose revenues,” as used in paragraph (2), means~~
9 ~~revenues consisting of all of the following: secured and unsecured~~
10 ~~revenues; less than countywide funds, secured and unsecured; prior~~
11 ~~year secured and unsecured penalties and delinquent taxes; sales~~
12 ~~and use taxes; transportation taxes (nontransit); property transfer~~
13 ~~taxes; transient lodging taxes; timber yield taxes; aircraft taxes;~~
14 ~~franchise taxes; fines, forfeitures, and penalties; revenues from~~
15 ~~use of money and property; motor vehicle in-lieu taxes; trailer~~
16 ~~coach in-lieu taxes; homeowner property tax relief; open-space~~
17 ~~tax relief; and cigarette taxes.~~